

Marshall Edmund (suing as Secretary of Universal Taekwondo Club) v Tunku Tan Sri Imran Almarhum Tuanku Ja'afar (as President of 'Taekwondo Malaysia') & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
W-02(NCVC)(W)-2196-10 OF 2013
DAVID WONG, TENGKU MAIMUN AND UMI KALTHUM JJCA
3 OCTOBER 2014

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Tort — Defamation — Libel — Action based on letter — Allegation that contents of letter untrue and defamatory — Natural meaning of contents of letter — Whether to mean that complainant was dishonest and untrustworthy — Whether caused distress and embarrassment to complainant — Whether complainant suffered losses — Whether there was conspiracy to injure complainant

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The appellant's cause of action in defamation against the first respondent was premised on a letter issued by the first respondent to the appellant ('the said letter') alleging that the contents of the said letter were untrue and were defamatory of the appellant and that the natural and ordinary meaning of the words used in the said letter meant and were understood to mean that the appellant was dishonest and untrustworthy; not professional and had committed a grave misconduct which warrants severe disciplinary action. The letter was caused to be distributed by the respondents to the members of the first respondent and to the schools of which the appellant had and was teaching taekwondo; the defamatory words used by the first respondent in the said letter was written with the aim of disparaging the integrity and reputation of the appellant in the field of taekwondo; and in consequence, the appellant's reputation had been seriously damaged, and the appellant had suffered loss, distress and embarrassment. In denying the allegations, the first respondent pleaded justification and the defence of fair comment and qualified privilege. As for the tort of conspiracy to injure against the second to the fifth respondents, the appellant pleaded that the second to the fifth respondents had unlawfully conspired to injure the appellant by the following unlawful means by unlawfully causing the issuance of the said letter of suspension which had not been endorsed by the executive board and which was ultra vires the first respondent's constitution particularly in respect of matters relating to disciplinary proceedings. The High Court dismissed the appellant's claim and hence, the present appeal. The issue that arose for adjudication was whether the trial judge had erred in law and in fact in considering the various issues and that His Lordship had failed to judicially appreciate the evidence.

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Held, dismissing the appeal:

- A (1) The trial judge had come to his decision correctly on the basis of the relevant law and the established evidence. The findings of the trial judge were not perverse. There was sufficient evidence to justify the decision of the trial judge which justification were found to be satisfactory. His Lordship had not fundamentally misdirected himself as to warrant appellate intervention. There was no reason to disturb the findings of the trial judge (see para 23).
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[Bahasa Malaysia summary]

- C Kausa tindakan dalam fitnah terhadap responden pertama adalah berdasarkan surat yang dikeluarkan oleh responden pertama kepada perayu ('surat tersebut') mendakwa bahawa kandungan surat tersebut adalah tidak benar dan fitnah terhadap perayu dan bahawa maksud semula jadi dan biasa perkataan-perkataan yang digunakan di dalam surat tersebut bermaksud dan difahami bermaksud bahawa perayu adalah tidak jujur dan tidak boleh dipercayai; tidak profesional dan telah melakukan salah laku serius yang mewajarkan tindakan disiplin yang keras. Surat tersebut telah diedarkan oleh responden-responen kepada ahli-ahli responden pertama dan kepada sekolah-sekolah yang mana perayu mengajar taekwando; perkataan-perkataan fitnah yang digunakan oleh responden pertama dalam surat tersebut ditulis dengan tujuan untuk memperkecilkan integriti dan reputasi perayu dalam bidang taekwando; dan akibatnya, reputasi perayu telah dirosakkan dengan serius, dan perayu mengalami kerugian, kesusahan dan rasa malu. Dalam menafikan tuduhan, responden pertama memplid justifikasi dan pembelaan komen yang adil dan perlindungan bersyarat. Untuk tort konspirasi untuk menjejaskan terhadap responden kedua hingga kelima, perayu memplid bahawa responden kedua hingga kelima telah menyalahi undang-undang dengan berkomplot untuk menjejaskan perayu dengan cara salah di sisi undang-undang berikut dengan secara salah menyebabkan pengeluaran surat penggantungan yang tidak diendorseskan oleh lembaga eksekutif dan yang mana ultra vires perlembagaan responden pertama terutamanya berkaitan perkara berkenaan prosiding tatatertib. Mahkamah Tinggi menolak tuntutan perayu dan maka, rayuan ini. Isu yang berbangkit untuk penghakiman adalah sama ada hakim perbicaraan telah silap dari segi undang-undang dan fakta dalam mempertimbangkan pelbagai isu dan bahawa Yang Arif telah gagal untuk secara kehakiman menghargai keterangan.
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Diputuskan, menolak rayuan:

- I (1) Hakim perbicaraan telah mencapai kepada keputusannya dengan betul atas dasar undang-undang relevan dan keterangan yang dibuktikan. Dapatan hakim perbicaraan tidak bertentangan. Terdapat keterangan yang mencukupi untuk menjustifikasikan keputusan hakim perbicaraan justifikasi yang mana adalah didapati memuaskan. Yang Arif telah secara asasnya tidak salah arah dirinya untuk mewajarkan campur tangan

mahkamah rayuan. Tidak ada sebab untuk mengganggu dapatan hakim perbicaraan (lihat perenggan 23).]

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Notes

For cases on libel, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 523–723.

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Cases referred to

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1, FC (refd)

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Sivalingam all Periasamy v Periasamy & Anor [1995] 3 MLJ 395, CA (refd)
Watt or Thomas v Thomas [1947] AC 484, HL (refd)

Legislation referred to

Sports Development Act 1997

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Appeal from: Civil Suit No 23NCVC-34–02 of 2012 (High Court, Kuala Lumpur)

Sivanesan Nadarajah (Vicknaraj RD Ratnam) for the appellant.
Francis Pereira (Prema Joseph with him) (Francis Pereira & Shan) for the respondent.

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Tengku Maimun JCA (delivering judgment of the court):

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[1] The brief background facts of this appeal are as follows. The appellant, Universal Taekwando Club, had filed a claim against the respondents, founded on a cause of action for defamation and for conspiracy to injure.

[2] Taekwando Malaysia ('the first respondent') was established under the Sports Development Act 1997 as the umbrella sports body to, inter alia, develop and promote taekwando (WTF) as a martial art sport in Malaysia. The appellant was established under the same Act as a sports body. At the material time, the second to the fourth respondents were the president, vice president and secretary general respectively of the first respondent while the fifth respondent was the chairman of the first respondent's technical executive committee (the technical executive committee). The second to the fifth respondents were also the members of the first respondent's executive board ('the executive board').

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[3] World Taekwando Federation ('WTF') is the governing body for the sport of taekwando on the international level. WTF only recognises the first respondent as the national governing body for the sport of taekwando in Malaysia.

- A [4] The appellant was a member of the first respondent and was categorised as a Premier Club under the first respondent's constitution. Pursuant to the constitution, the appellant was required, from time to time to pay certain charges, fees and/or levies to the first respondent.
- B [5] The appellant's cause of action in defamation against the first respondent is premised on a letter dated 23 December 2011 issued by the first respondent to the appellant ('the said letter'). The said letter reads:
- C The Taekwondo Malaysia (WTF) Executive Board, at its meeting on Dec 12, 2011 had decided to suspend your club with immediate effect for non-payment of grading fees 2011.
- Your Club has 14 days from the date stated above to explain why further action should not be taken against your club.
- D [6] The appellant alleged that the contents of the said letter are untrue and are defamatory of the appellant and that the natural and ordinary meaning of the words used in the said letter mean and were understood to mean that the appellant is dishonest and untrustworthy; is not professional and has committed a grave misconduct which warrants severe disciplinary action.
- E [7] The appellant further alleged that:
- (a) the said letter was caused to be distributed by the respondents to the members of the first respondent and to the schools of which the appellant had and are teaching taekwando;
- F (b) the defamatory words used by the first respondent in the said letter was written with the aim of disparaging the integrity and reputation of the appellant in the field of taekwando; and
- G that in consequence thereof, the appellant's reputation has been seriously damaged, and the appellant has suffered loss, distress and embarrassment.
- H [8] The first respondent denied that the said letter was defamatory of the appellant and contended that the words complained of in their natural and ordinary meaning can be understood to mean that:
- (a) the appellant's membership with the first respondent was suspended as the appellant had failed to pay the relevant grading fees; and
- I (b) the appellant was to explain why no further action ought not to be taken.
- [9] The first respondent pleaded justification and contended that the words complained of when read in the context, bore the meaning ascribed above and that they were true in substance and in fact. The first respondent had also

pleaded the defence of fair comment and qualified privilege.

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[10] As for the tort of conspiracy to injure against the second to the fifth respondents, the appellant pleaded that the second to the fifth respondents had unlawfully conspired to injure the appellant by the following unlawful means:

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(a) by unlawfully causing the issuance of the said letter of suspension which had not been endorsed by the executive board and which was ultra vires the first respondent's constitution particularly in respect of matters relating to disciplinary proceedings;

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(b) that at the time of issuance of the said letter the second to the fifth respondents knew or ought to have known that there was no enquiry on the appellant relating to any complaint involving the appellant and that in the circumstance, there is no provision to suspend the appellant under the first respondent's constitution and/or the by-laws; and

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(c) that the said respondents knew or ought to have known that grading fees is not mandatory.

[11] The second to the fifth respondents denied the appellant's allegation. They contended that the decision to suspend the appellant was done in accordance with law.

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[12] Having heard the witnesses, the learned trial judge found that:

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(a) the words in the said letter do refer to the appellant but that the words are not capable of defamatory meaning;

(b) the appellant had failed to establish the act of publication of the said letter by the first respondent to any third party; and

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(c) even if publication can be attributed to the first respondent, the defence of qualified privilege and justification would apply to defeat the appellant's claim.

[13] In respect of the claim for conspiracy to injure, having considered the relevant provisions in the constitution and the by-laws of the first respondent, the learned trial judge found that the first respondent's exercise of power to suspend the appellant's membership was not ultra vires its constitution or the by-laws.

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[14] Consequently, the appellant's claim against the respondents were dismissed with costs, hence the appeal before us.

A THE APPEAL

B [15] The appellant had listed 17 grounds of appeal in the memorandum of appeal which was summarised into nine main grounds. We do not propose to reproduce them. Suffice to state that central to the complaint of learned counsel was that the learned trial judge had erred in law and in fact in considering the various issues and that His Lordship had failed to judicially appreciate the evidence.

C [16] On the authorities of, inter alia, *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; *Sivalingam all Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; *Watt or Thomas v Thomas* [1947] AC 484, it was submitted that this appeal warrants appellate intervention.

D [17] The principle for appellate intervention as set out by this court. In *Sivalingam all Periasamy* at pp 398–399, is:

E It is trite law that this court will not readily interfere with the findings of fact arrived at by the court of first instance to which the law entrusts the primary task of evaluation of the evidence. But we are under a duty to intervene in a case where, as here, the trial court has so fundamentally misdirected itself, that one may safely say that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion.

F [18] Steve Shim CJ (Sabah & Sarawak) had said the following in *Gan Yook Chin (P)* at p 10:

G [14] In our view, the Court of Appeal in citing these cases had clearly borne in mind the central feature of appellate intervention, ie to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. In so doing, the Court of Appeal was perfectly entitled to examine the process of evaluation of the evidence by the trial court. ...

[19] In *Watt or Thomas v Thomas* [1947] AC 484, Lord Thankerton, at pp 487–488, had stated thus on the duty of the appellate court:

H ... the principle embodied therein is a simple one, and may be stated thus: I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen

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and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question.

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[20] We examined the grounds of judgment of the learned trial judge with the above principles in mind. On the cause of action for defamation, the learned trial judge had considered the law on defamation and had considered the evidence of PW2, PW3, PW4 and DW1 in coming to the conclusion that there was no publication by the first respondent.

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[21] Although the learned trial judge found that the words in the said letter do refer to the appellant, His Lordship found that the words are not capable of defamatory meaning of the appellant, as the said letter when read in its context, merely conveyed a valid decision of the executive board to suspend the appellant. And the reason for the suspension was the non-payment of grading fee. The learned trial judge found that the appellant had indeed not paid the grading fees despite numerous reminders. His Lordship disagreed with the appellant that the payment of grading levy was not mandatory and that it was merely a voluntary contribution.

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[22] In dismissing the appellant's claim under the conspiracy to injure, the learned trial judge had considered the law relating to the tort of conspiracy to injure and having regard to the constitution and the by-laws of the first respondent and the facts of the case, the learned trial judge then made a finding that the first respondent was empowered to impose grading levies on its members. The learned trial judge had also considered the oral and documentary evidence in making his finding that the conduct of the appellant had been one of acceptance of the first respondent's right to impose and collect grading fees.

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[23] In the light of all the above, we found that the learned trial judge had come to his decision correctly on the basis of the relevant law and the established evidence. The findings of the learned trial judge were not perverse. There was sufficient evidence to justify the decision of the learned trial judge which justification we found to be satisfactory. His Lordship had not fundamentally misdirected himself as to warrant appellate intervention. To conclude, we found no reason to disturb the findings of the learned trial judge. We therefore dismissed the appeal with costs of RM50,000 to be paid by the appellant to the respondent. We ordered the deposit to be refunded to the appellant.

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A *Appeal dismissed.*

Reported by Afiq Mohamad Noor

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